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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,594	03/29/2004	Stephen Richard Kazyaka		2849

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/811,594

Applicant(s)

KAZYAKA, STEPHEN RICHARD

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

Claims 2-4 have been canceled.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klein in view of Griffin et al. (Griffin).

Klein discloses a beverage holder which holds a container 24 of drinking fluids, collects its condensation and spilled fluids and directs them to its self contained reservoir, the holder comprises a holder lower body 21 with an upper rim, a self contained reservoir created from a centered vertical support column 4a with a vertical extending annular sidewall (see Fig. 2A, 4 and 6) which provides support to the held container and creates an area to add weight, a magnet or lighting to its bottom open end (the area formed by the recess beneath 4a), the holder directs spilled fluid into the self contained reservoir (the area surrounding support column 4a) utilizing a lower funnel (the tapered sidewalls of the lower body 21), the holder fits into existing cup holders, is portable, is machine washable and can be manufactured in one-piece (the lid which is another piece is not considered part of the one-piece beverage holder. Klein discloses the invention except for the upper funnel with an upper rim taller than the container being held and a one-piece holder that contains the entire height of the held container. Griffin teaches a beverage can holder having an upper funnel (the upwardly and outwardly extending annular portion which widens at the upper open end) with an upper rim taller than the container being held. It would have been obvious to add an upper funnel to provide a smooth, cup-like upper drinking portion.

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The cup-like drinking portion makes it easier to drink from than drinking from the beverage can which provides the hazard of sharp edges that can cut a user's lip. The addition of the upper funnel doesn't replace or displace the upper cap with drinking orifice that was provided in Klein. Although the upper cap is a separate piece from the rest of the holder, the rest of the holder has all the structural elements and is considered one-piece because it doesn't rely on the upper cap. Griffin also teaches that the funnel is integrally formed in one-piece with the lower body of the holder. It would have been obvious to integrally form the funnel with the lower body of Klein as motivated by the simplification of manufacturing a single piece alleviating the need to manufacture the two parts in separate operations, inventory and store two separate parts and assemble the two parts or possibly package the two parts separately. The resulting holder with an integrally formed funnel extending above the uppermost portion of the held container is a one-piece holder that contains the entire height of the held container.

Applicant's arguments filed February 12, 2007 have been fully considered but they are not persuasive. The examiner believes that some of the principles of operation of the Klein would be changed only slightly by modification with Griffin. However, the basic operation of the beverage holder is maintained. For example, the function of (1) holding a beverage is preserved, (2) sealing the beverage with a separable lid such that carbonation doesn't escape is preserved since the modified holder is capable of use with an upper cap, and (3) varying flow with a twist valve and sealing is preserved.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3781

sjc